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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT CRUZ AND DARWIN
DIAS,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, DOES 1-10, Inclusive,

Defendants.

CASE NO. C08-00244 MEJ
Civil Rights

**JOINT CASE MANAGEMENT
STATEMENT**

Date: April 24, 2008
Time: 10:00 a.m.
Place: U.S. District Court
450 Golden Gate Ave.
Courtroom B, 15th Floor
San Francisco, CA
Judge: Hon. Maria-Elena James

Pursuant to this Court's Civil Local Rule 16-9, the parties jointly submit this
Case Management Statement. Each party certifies that its lead trial counsel who will try this

Joint Case Management Statement:
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case met and conferred for the preparation of this Statement as required by Civ. L.R. 16-3.

I. DESCRIPTION OF THE CASE:

1. A brief description of events underlying the action. The following are the positions of the parties:

a. Plaintiffs' Position:

Plaintiffs Robert Cruz and Darwin Dias are each a physically disabled person who requires the use of a wheelchair. Plaintiffs Robert Cruz and Darwin Dias were stranded on a cold and windy evening for several hours at Hallidie Plaza, a public facility owned and operated by defendants City and County of San Francisco located adjacent to Powell and Market Streets in San Francisco, California, because the City adopted and carried out a policy of regularly stopping elevator access for disabled persons to Hallidie Plaza at a time when its facilities were open for use by non-disabled persons.

On Saturday, May 26, 2007, at approximately 2:45 p.m., plaintiffs Robert Cruz and Darwin Dias took the elevator down from Market Street to the Hallidie Plaza, one level down from the street level, in order to meet friends for coffee and snacks at the Cable Car Coffee restaurant located on the Hallidie Plaza. This elevator is owned and operated by defendants, and each of them. When plaintiffs arrived at the Hallidie Plaza, they met several non-disabled friends at the Cable Car Coffee restaurant, and sat in their wheelchairs at an outdoor table. Shortly before 4 p.m. they parted with their friends, who left by walking down several steps to BART. When plaintiffs wheeled over to the elevator to leave, they discovered that the elevator had been shut off and an orange cone had been placed in front of the elevator door. They saw for the first time a sign above the elevator, posted by defendants, stating that the elevator was kept open and operable only from 9 a.m. to 5 p.m., Monday-Friday, and 9 a.m. to 3 p.m. on Saturday and Sunday. Such a policy specifically discriminates against physically disabled persons who use wheelchairs in that said policy effectively bars wheelchair users from using the facilities at Hallidie Plaza, including those of the Cable Car Coffee restaurant, after 3 p.m. on weekends when such facilities are open to the general public and are available to non-disabled persons without subjecting such non-disabled persons to the danger of being trapped at

1 Hallidie Plaza or being excluded from Hallidie Plaza.

2 Plaintiffs then discovered that there was no other way to leave Hallidie Plaza when the
3 elevator was closed, except by going down approximately six stairs to the BART station level
4 or up approximately 20 stairs to the street level. As a result, plaintiffs Robert Cruz and Darwin
5 Dias were trapped and stranded on the Hallidie Plaza level along with their heavy motorized
6 wheelchairs, suffered a violation of their civil rights and were falsely imprisoned. The Cable
7 Car Coffee restaurant was still open. Plaintiffs inquired of the Cable Car Coffee staff as to
8 whether there were any restroom facilities on the Hallidie Plaza level, and were told that there
9 were none. The Cable Car Coffee employees also advised that they did not know of any way to
10 contact someone to have the elevator turned back on. There were also no signs or
11 communication devices to notify the City of San Francisco or its employees that disabled
12 persons were trapped on the Hallidie Plaza level.

13 Claimant Robert Cruz was in pain from his need to urinate and was concerned that he
14 would suffer a bodily functions accident in his clothing. He was able to signal two uniformed
15 Muni Metro police officers who came over and suggested that he go to the corner gutter and
16 urinate there, despite his humiliation in having to be required to urinate in a public place. Both
17 plaintiffs were also in pain and physical discomfort due to the weather turning increasingly cold
18 and windy.

19 Plaintiffs called the San Francisco Muni City Services line and asked for assistance and,
20 when the San Francisco Muni employee stated that he could not provide assistance, plaintiffs
21 asked to speak to a supervisor. The supervisor claimed that the elevator did not belong to San
22 Francisco Muni, but told plaintiffs to call the San Francisco Department of Public Works;
23 plaintiffs tried to do this but were unable to obtain any assistance. Plaintiffs were told by the
24 City employee at the City Services direct line that she had contacted the Department of Public
25 Works and was told that their "engineer," who allegedly had the only key for the Hallidie Plaza
26 elevator, had left for the Memorial Day weekend and there was no way to contact him.

27 Meanwhile, after an extended wait, plaintiff Robert Cruz again had a painful need to
28 urinate and, with no restroom facilities available, was again required to use a corner of the

1 gutter, despite his embarrassment that he might be in full view of members of the public
 2 passing by at the upper street level. Finally, plaintiffs called the San Francisco Police
 3 Department, but were then told to call the San Francisco Fire Department to request assistance.
 4 Plaintiffs called the Fire Department and explained their situation and told where the Hallidie
 5 Plaza was located. Finally, the San Francisco Fire Department personnel arrived and assisted
 6 both plaintiffs down the stairs to the BART/Muni Metro concourse level, and carried their
 7 heavy motorized wheelchairs down to this level, so that plaintiffs could finally leave the
 8 premises.

9 Defendants' apparent disdain for the rights of disabled wheelchair users to access
 10 Hallidie Plaza was emphasized when, shortly after plaintiffs filed and served the complaint in
 11 this action, defendants closed the elevator altogether. While defendants have alleged that the
 12 elevator was closed for repairs, it was left out of operation for several months, thus blocking all
 13 disabled access to Hallidie Plaza, the Cable Car Coffee restaurant, and the San Francisco
 14 Visitors Center. This also impeded access for disabled persons to the Powell St. BART station
 15 served by the same elevator. The delay in making any repairs shows that access for disabled
 16 persons was not a priority for the City of San Francisco.

17 Defendants' failure to provide access in the manner described above was in violation of
 18 multiple federal and state laws and regulations, including but not limited to Title II of the
 19 Americans With Disabilities Act of 1990, § 504 of the Rehabilitation Act of 1973, California
 20 Government Code §§ 4450ff, California Civil Code §§ 54 and 54.1, and Title 24 of, the
 21 California Building Code. As the result of the defendants' failure to carry out its legal
 22 obligations, plaintiffs were discriminated against on the basis of their disability, and suffered
 23 violation of their federal and state civil rights, suffered physical, mental, and emotional distress
 24 and injuries, all to their damages.

25 **b. Defendant's Position:**

26 Hallidie Plaza is a City-owned space occupying an intermediate level between street-
 27 level and the Powell Street BART/Muni station. While the Plaza may be accessed via stairs or
 28 escalator, an elevator provides disabled access from the street level to the Plaza. A separate

1 elevator provides service to the BART/MUNI station from Market Street.

2 Posted on the elevator used to access Hallidie Plaza are signs indicating its hours of
3 operation, which coincide with the hours of operation of the privately owned San Francisco
4 Visitor Center located in Hallidie Plaza. The posted signs indicate that the elevator is operable
5 only from 9 a.m. to 5 p.m., Monday-Friday, and 9 a.m. to 3 p.m. on Saturday and Sunday; the
6 elevator must be activated and de-activated daily by employees of the San Francisco Department
7 of Public Works to avoid vandalism, misuse, and risk of harm to the public.

8 On information and belief, on May 26, 2007, a Saturday, disabled plaintiffs Robert Cruz
9 and Darwin Dias took the elevator down from Market Street to Hallidie Plaza at approximately
10 2:45 p.m. Plaintiffs did not check the elevator's hours of operation before using the elevators to
11 proceed to the Plaza level. After proceeding to the Plaza level, Plaintiffs remained there until
12 approximately 4:00 p.m. The elevator had closed at 3:00 p.m., as noted by the clearly posted
13 sign.

14 Unfortunately, as Plaintiffs had stayed in the Plaza until nearly an hour after the elevator's
15 posted closing time, they were unable to use that method of exiting the Plaza. Plaintiffs did not
16 immediately dial 911 upon discovering that they were unable to leave the Plaza, but rather
17 delayed calling the Fire or Police Departments, who once called promptly assisted Plaintiffs out
18 of the Plaza. When requested to assist Plaintiffs in leaving the Plaza, the San Francisco Fire
19 Department sent several employees to aid Plaintiffs in leaving the Plaza.

20 Although Plaintiffs append to their portion of this Statement complaints about the current
21 status of the Hallidie Plaza elevator, such contentions are not present in their Complaint in this
22 action, nor are they pertinent to this suit. The City has repeatedly assured Plaintiffs that the
23 closure of the elevator was not due to any retaliation against Plaintiffs, but rather due to
24 mechanical problems.

25 The elevator at Hallidie Plaza is currently in full operating service. The previous out-of-
26 order status of the elevator was due to severe structural damage caused during a Fire Department
27 rescue at that site. The rescue required that the Fire Department take actions that damaged the
28 top floor hoist way door jamb and top floor door lock assembly of the elevator. The elevator was

1 promptly evaluated for repairs, which unfortunately required that several parts be fabricated
 2 before the repair company could re-open the elevator. The City worked with the company
 3 responsible for the elevator's maintenance and repair to re-open the elevator as soon as possible,
 4 after assuring that the parts were fabricated to specifications, and that the elevator was
 5 satisfactorily repaired and safe for public use.

6 **2. The principal factual issues that the parties dispute:**

7 **a. Plaintiffs' Factual Issues:**

8 1) Did defendants carry out new construction or "alterations, structural
 9 repairs, and additions" at the subject premises after 1968, mandating full
 10 compliance with Gov. Code § 4455 and related California Building Codes
 11 including, ANSI, Title 24-2 regulations and federal ADAAG standards?

12 2) Were the subject facilities, programs and activities cited in plaintiffs'
 13 Complaint and other relevant facilities serving Hallidie Plaza inaccessible to
 14 plaintiffs and other disabled wheelchair users on May 26, 2007, when plaintiffs
 15 visited the premises?

16 3) Did defendants prepare an "ADA Transition Plan" for the removal of
 17 barriers and the modification of policies and practices to ensure that all of their
 18 programs, services and activities were accessible on a "full and equal" basis to
 19 disabled persons?

20 4) Did defendants remove architectural barriers identified and modify
 21 policies and programs to provide access as set forth in their "ADA Transition
 22 Plan?"

23 5) Have defendants received federal funding subjecting them to
 24 additional liability under section 504 of the Rehabilitation Act?

25 6) What access improvements/modifications have defendants already
 26 made in response to plaintiffs' lawsuit?

27 7) What damages did plaintiffs incur as the result of lack of access at
 28 Hallidie Plaza, under both state law standards (Civil Code §54.3), under Section

504 of the Rehabilitation Act of 1973, and pursuant to Title II of the ADA, from the date of their visit of May 26, 2007, and every subsequent time plaintiffs have been deterred from returning to the relevant facilities, or obtaining the programs, services, and activities offered by defendants due to the lack of accessible facilities?

8) Are treble damages appropriate because of defendants' intentional violation of rights of disabled persons?

9) Did the City of San Francisco retaliate against the disabled plaintiffs by closing the subject elevator after being served with plaintiff's complaint, and by keeping the elevator closed for several months during repairs, rather than making this repair a high priority because defendants knew that disabled persons were totally blocked during this closure from any access to the Cable Car Coffee restaurant and the San Francisco Visitors Center (both located on Hallidie Plaza)?

b. Defendant's Factual Issues:

1) Were the subject facilities, programs and activities cited in plaintiffs' Complaint and other relevant facilities serving Hallidie Plaza inaccessible to plaintiffs and other disabled wheelchair users on May 26, 2007, when plaintiffs visited the premises?

2) Is Hallidie Plaza itself a facility, program, or activity offered by Defendants?

3) Did the City provide reasonable access to the facilities, programs, or activities offered in Hallidie Plaza?

4) Did the City taking appropriate measures to repair the elevator at Hallidie Plaza, which was severely damaged during a Fire Department rescue unrelated to Plaintiffs' experiences at the Plaza?

3. The principal legal issues that the parties dispute:

a. Plaintiffs' Legal Issues:

1 1) What access changes and reasonable modifications in policy are
2 required under the Americans with Disabilities Act of 1990 and the
3 corresponding regulations entitled Americans with Disabilities Act Access
4 Guidelines (ADAAG)?

5 2) What access changes and monetary damages are required for
6 violations of Civil Code §§ 54, 54.1 and 54.3?

7 3) What damages are also required under California law for access
8 violations under ADA standards, as incorporated by reference into California
9 Civil Code §§ 54(c) and 54.1(d)?

10 4) Do Building Departments enforce the ADA, or is it enforced only by the
11 U.S. Department of Justice and private lawsuits?

12 5) What barrier removal and monetary damages are required for violations
13 of Section 54.3 of the Civil Code, Section 504 of the Rehabilitation Act of 1973,
14 and Title II of the ADA?

15 6) Are treble damages appropriate under Civil Code § 54.3?

16 **b. Defendant's Legal Issues:**

17 1) What access changes and reasonable modifications in policy are
18 required under the Americans with Disabilities Act of 1990 and the
19 corresponding regulations?

20 2) Is Hallidie Plaza itself a facility, program, or activity offered by
21 Defendants?

22 3) Did the City provide reasonable access to the facilities, programs,
23 or activities offered in Hallidie Plaza?

24 4) What access changes and reasonable modifications in policy are
25 warranted under the Americans with Disabilities Act of 1990 and corresponding
26 regulations, and/or California Civil Code §§ 54, 54.1?

27 5) What, if any, monetary damages are warranted for the lack of disabled
28 access alleged by Plaintiffs in this case?

1 **4. The other factual issues that remain unresolved for the reason stated below**
2 **and how the parties propose to resolve those issues:** None known at this time.

3 **5. The parties that have not been served and the reasons:** None; however, the
4 parties reserve the right to join, cross-claim, and counterclaim against additional parties when
5 and if their capacities and relative responsibilities are ascertained.

6 **6. The additional parties which the below-specified parties intend to join and**
7 **the intended time frame for such joinder:** None; however the parties reserve the right to join,
8 cross-claim, and counterclaim against additional parties when and if their capacities and relative
9 responsibilities are ascertained.

10 **II. ALTERNATIVE DISPUTE RESOLUTION:**

11 **7. The following parties consent to assignment of this case to a United States**
12 **Magistrate Judge for trial:** All parties have consented to the assignment of this case to a
13 United States Magistrate Judge for trial.

14 **8. The parties have already been assigned to the following court ADR process:**
15 None.

16 **9. The ADR process to which the parties jointly request referral:** The parties
17 have represented their intention of cooperating toward an early resolution at a settlement
18 conference before a Magistrate Judge or mediator. Plaintiffs request assignment to a
19 Magistrate Judge, as settlement is more likely by such assignment.

20 The parties request referral to a Magistrate Judge or mediator for an early settlement
21 conference/mediation to be set within 90 days of the Case Management Conference with a
22 Further Case Management Conference to be scheduled 30 days after the early settlement
23 conference/mediation in the event the parties do not settle the case.

24 **III. DISCLOSURES:**

25 **10. The parties certify the following disclosures:** The parties agree to exchange
26 disclosures on or before May 1, 2008.

27 **IV. DISCOVERY:**

28 **11. The parties agree to the following discovery plan:**

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The parties have discussed scheduling a cooperative site visit of the subject premises.

If the parties are unable to cooperate to informally exchange information after this site visit, the parties would then seek formal discovery as limited by the Federal Rules of Civil Procedure and Local Rules.

Joint Position Re: Limitations

If the Court selects the suggested trial date at the “end of June 2009,” the parties suggest the following limitations and deadlines.

Limitations:

- i. Depositions: As per Federal Rules of Civil Procedure.
- ii. Interrogatories: The parties agree to proceed as per the Federal Rules of Civil Procedure.
- iii. Experts. As per the Federal Rules of Civil Procedure.
- iv. Supplemental disclosures: As per the Federal Rules of Civil Procedure.
- v. Initial Disclosures From Any Newly Added Parties: Within 45 days of the new party’s initial appearance.

Deadlines: If a trial date is set at the end of May, 2009:

Deadline to disclose experts and expert reports October, 2008
 Deadline to complete all discovery including experts December, 2008
 Last filing date for dispositive motions December, 2008
 Final pretrial conference April, 2009

12. The parties request a trial date as follows: End of May, 2009.

13. The parties expect that the trial will last for the following number of days:

Estimate without the benefit of discovery and identification of issues through pre-trial statement: 4-6 trial days.

V. IDENTIFICATION AND SIGNATURE OF LEAD TRIAL COUNSEL:

a. For Plaintiffs ROBERT CRUZ AND DARWIN DIAS:

PAUL L. REIN, Esq.

Joint Case Management Statement:
Case No. C05-2985 MEJ

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Dated: April 17, 2008

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/s/ Paul L. Rein
Attorneys for Plaintiffs
ROBERT CRUZ AND DARWIN DIAS

Dated: April 17, 2008

ERIN BERNSTEIN

/s/ Erin Bernstein
Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

In addition, the Court orders:

Dated: _____

HON. MARIA-ELENA JAMES
U.S. MAGISTRATE JUDGE